ROBERT GLADWELL

IBLA 76-525 Decided August 24, 1976

Appeal from a decision of the Colorado State Office, Bureau of Land Management, in file C-23490 offering appellant a small tract lease for a certain parcel of land.

Affirmed.

1. Small Tract Act: Generally -- Small Tract Act: Classifications

   The issuance of a lease for public lands under the Small Tract Act, 43 U.S.C. § 682a et seq. (1970), is within the discretion of the Secretary of the Interior. A decision to offer such a lease to a party residing in certain improvements on the public domain without claim of title to the land on which the improvements are located is not an abuse of discretion and will be upheld where the land is primarily valuable for outdoor recreation purposes and is important for purposes of providing public access to recreation opportunities on other public land and, thus, disposal of a fee simple interest would be inconsistent with good land management practices.

2. Small Tract Act: Generally

   No rights are initiated under the Small Tract Act, 43 U.S.C. § 682a et seq. (1970), by occupying or improving the land prior to receiving authority to do so.

3. Small Tract Act: Generally

   An applicant for land under the Small Tract Act, 43 U.S.C. § 682a et seq. (1970), cannot acquire any rights in the land by virtue of administrative delay.

APPEARANCES: Robert Gladwell, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is brought from a decision of the Colorado State Office, Bureau of Land Management (BLM), in the file designated C-23490, informing appellant that a certain 1.1 acre tract of public domain land in Sec. 2, T. 15 S., R. 103 W., Sixth Prin. Mer., Mesa County, Colorado, is classified for lease under the Small Tract Act of June 1, 1938, as amended, 43 U.S.C. § 682a et seq. (1970), and offering appellant a lease for said tract pursuant to the statute.

The essential contention raised by appellant in his statement of reasons for appeal is that he should be allowed to purchase (rather than lease) the subject tract or a slightly larger parcel (of up to five acres) encompassing the subject tract. Appellant alleges that he was contracted by the BLM area manager in August of 1970, after he took up residence on the subject property, and asked to submit all evidence which he had regarding ownership of an interest in the property. After submitting such information, appellant received a letter from the BLM District Manager. Appellant alleges that this constituted a letter of instructions advising him how to proceed in order to obtain patent to a tract of not more than five acres.

Appellant asserts that he had the property surveyed at his own expense in reliance upon these instructions. He also contends he has spent "many thousands of dollars" improving the property during the approximately five years he has lived on the land and that he has been paying taxes on the improvements. Appellant argues it is unfair to refuse to sell the land now after he has been residing on and improving the land for five years. It is also contended by appellant that laws which exist now are being applied retroactively to his occupancy, which commenced five years ago.

The case file contains several instruments which appellant has apparently filed in support of his alleged claim to the land and improvements thereon. The first is a copy of a location certificate filed by R. E. Hannigan on September 5, 1946, among the land records of Mesa County, Colorado, for the Ruby No. 1 lode mining claim.

The next instrument is a copy of a quitclaim deed of the subject mining claim "together with all improvements thereon or appurtenant thereto" dated January 26, 1957, from Robert Hannigan to Ralph D. Hickman. The file also includes a copy of a quitclaim deed dated March 8, 1961, of the subject mining claim "together with the appurtenances" from Ralph D. Hickman to Ethel M. Poage.

Finally, the file contains a copy of a quitclaim deed dated August 22, 1968, of the Ruby No. 1 mining claim "with the appurtenances" from Ethel M. Poage to Robert Gladwell and Erolinda Gladwell, as joint tenants. 1/

Review of the file discloses that a letter dated August 27, 1970, was sent to appellant by the BLM Area Manager advising appellant that the rock cabin improvements which he claimed are situated on federal land. Apparently after discussion between BLM personnel and the appellant and the submission by him of those documents which allegedly supported his claim, the BLM District Manager sent appellant a letter dated January 21, 1971. This letter informed appellant that he did not qualify for a patent to the land under the Mining Claims Occupancy Act of October 23, 1962, as amended, 30 U.S.C. § 701 et seq. (1970). The BLM further stated in the letter that "[I]t may be possible to classify the area occupied by your improvements for direct sale under the Small Tract Act."

The BLM land report in the case file discloses that the subject tract of land is public domain administered by the BLM. A right-of-way granted to the State of Colorado for a highway lies immediately to the north of the land. The subject tract on which appellant's improvements are located occupies a small bench of land between the highway to the north and West Creek to the south. The creek is described as a very fine fishing stream. The land in question is presently embraced in a federal grazing lease. The

1/ There is some indication in the file that appellant may have settled on the property with a view to applying for patent under the Mining Claims Occupancy Act of October 23, 1962, as amended, 30 U.S.C. § 701 et seq. (1970). However, § 2 of the Act restricts eligibility for receiving a patent to "a residential occupant-owner, as of October 23, 1962, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence * * *." 30 U.S.C. § 702 (1970). The deed of the mining claim and improvements to appellant and his wife is dated August 22, 1966. According to the land report in the file, appellant did not establish residency on the tract until June of 1970. Therefore, appellant was not eligible for patent under the Act. Appellant was advised of this fact in the same letter from the BLM District Manager, dated January 21, 1971, which appellant cites in his statement of reasons for appeal.

Appellant has not filed an application for patent to the mining claim itself. Although the description of the location of the mining claim contained in the certificate of location is vague, it appears from the BLM land report in the case file that the tract in question containing the improvements is not located within the bounds of the mining claim. Appellant has not contested this. Accordingly, this Board is not called upon to make any ruling with respect to the validity of the mining claim.

tract is part of a much larger parcel of public domain which has been classified for retention in federal ownership and multiple use management pursuant to the Classification and Multiple Use Act of September 19, 1964, as amended, 43 U.S.C. §§ 1411-1418 (1970).

With respect to the potential uses of the subject tract, the land report indicates that the tract provides important access from the highway to West Creek for fishing and to the Unaweep Canyon and adjacent plateaus for outdoor recreation purposes. The survey plat discloses that much of the land in the area which is immediately adjacent to the highway right-of-way has been patented. Thus, the remaining public land adjoining the right-of-way becomes important for public access to the national resource lands of the Unaweep Canyon area. Topographic restrictions and private ownership of other tracts make the site uniquely adaptable for public camping use. The land report recites that "A patent would forever perpetrate [sic: perpetuate] an inholding incompatible with sound management programs * * *." Consequently, it was concluded that the subject tract is not suitable for a sale or disposal classification.

Classification of public lands for either sale or lease under the Small Tract Act is committed to the discretion of the Secretary of the Interior. 43 U.S.C. § 682a (1970); Lutzenhiser v. Udall, 432 F.2d 328 (9th Cir. 1970).

This appeal raises the issue of whether the decision of the BLM to offer a small tract lease to appellant is an abuse of the Secretary's discretion where disposal of a fee simple interest in the property would be inconsistent with the public uses for which the tract of land is primarily valuable. The leading cases on this question are Edward W. Kirk, 20 IBLA 156 (1975) and Richard O. Morgan, 10 IBLA 141 (1973).

The Kirk case, supra, involved an appeal from a decision of the BLM offering a small tract lease for a certain tract of land, on which appellant resided, classified previously for multiple use management. Appellant had no claim of title to the land. The primary values of the land in the area were recognized by the BLM as recreation and open space. The record disclosed that patenting of the land would interfere with long-range management plans for the public domain in the area. This Board held that it is neither an abuse of discretion nor contrary to any relevant statute or regulation to offer a lease pursuant to the Small Tract Act, 43 U.S.C. § 682a et seq. (1970), instead of a fee simple title where the latter form of tenure would interfere with BLM resource development and management programs. Edward W. Kirk, supra at 160.

The Morgan case, supra, involved an appeal from a BLM decision rejecting a purchase application under the Mining Claims Occupancy Act of October 23, 1962, as amended, 30 U.S.C. § 701 et seq. (1970), because the applicant did not qualify under that statute, and offering the applicant a small tract lease instead. A land report in the case file disclosed that the applied-for tract was located in such a manner as to disrupt a large block of land being managed for open space and outdoor recreation if converted to private ownership. This Board held that it is not an abuse of the Secretary's discretion under the Small Tract Act, 43 U.S.C. § 682a et seq. (1970), to offer applicants a five-year renewable lease where it appears that a more permanent tenure would not be consistent with good land management practice. Richard O. Morgan, supra at 144.

[1] The relevant facts of the present case are sufficiently similar to the facts of Edward W. Kirk, supra, and Richard O. Morgan, supra, to cause the holdings therein to be controlling. A decision by the BLM to issue a small tract lease to appellant residing in certain improvements on the public domain without claim of title to the land on which the improvements are located is not an abuse of the Secretary's discretion and will be upheld where the well-documented record clearly establishes that the tract is primarily valuable for outdoor recreation and for purposes of public access to recreation opportunities on other public lands, and the disposal of a fee simple interest in the land would disrupt a large block of land being managed for open space and outdoor recreation, and, thus, disposal of a fee simple interest would be inconsistent with good land management practices.

An applicant can gain no right to public land by reliance on erroneous or unauthorized statements made by a BLM employee. Richard O. Morgan, supra at 144; 43 CFR 1810.3. To the extent that appellant bases his appeal on the statements of BLM officials prior to the decision appealed from, his contention must be rejected. 2/

2/ The context of this case does not fit within the doctrine of equitable estoppel. To create an estoppel the representation relied on must be a statement of material fact and not a mere expression of opinion. Thus, representations or opinions as to matters of law do not ordinarily create an estoppel. 31 C.J.S. Estoppel § 79 (1964); United States v. Johnson, 23 IBLA 349 (1976); United States v. Fleming, 20 IBLA 83 (1975). The statement by the BLM in the letter of January 21, 1971, cited by appellant in his statement of reasons merely constitutes an opinion (of the author) that it may be possible at some time to reclassify the lands for sale.

Appellant implies in his statement of reasons for appeal that the relevant law has changed since he initiated his occupancy and that new laws are being applied to his claim retroactively with consequent prejudice to appellant. However, he has not pointed out any change in the relevant law and we are not aware of any such change. Therefore, we must reject this contention.

[2, 3] Similarly, we must reject appellant's contention that it is unfair to decline to sell him the land after he has been living on it for several years with the knowledge of the BLM. No rights are initiated under the Small Tract Act, 43 U.S.C. § 682a et seq. (1970), by occupying or improving the land prior to receiving authority to do so. Fred J. Rand, A-30228 (March 26, 1965). Further, an applicant for land under the Act cannot acquire any right in the land by virtue of administrative delay. Eugene G. Roguszka, 15 IBLA 1 (1974). A fortiori, one who has not filed an application cannot benefit from delay. Appellant has neither filed an application for a small tract lease nor received authorization for occupying and improving the public domain. Therefore, appellant's rights have not been prejudiced by delay.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Newton Frishberg
Chief Administrative Judge